

House File 2177 - Introduced

HOUSE FILE 2177

BY ISENHART

A BILL FOR

1 An Act providing for the establishment and administration of
2 an electronic case management system by the department
3 of agriculture and land stewardship for claims involving
4 damages resulting from the application of pesticides, and
5 including effective date and applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 206.2, Code 2020, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 11A. "*Drift*" means the movement of a
4 pesticide during or immediately after application through the
5 air to a site other than the intended site of application.

6 Sec. 2. Section 206.14, Code 2020, is amended to read as
7 follows:

8 **206.14 Reports of pesticide accidents, ~~incidents or loss~~ —**
9 **damages — electronic case management system.**

10 1. The secretary department may by rule require the
11 reporting of significant pesticide accidents or related
12 incidents, including drift, to a designated state agency.

13 2. Any person claiming damages from a pesticide application
14 shall ~~have filed~~ file with the secretary department, on a form
15 prescribed by the secretary department, a written ~~statement~~
16 report claiming that the person has been damaged by a pesticide
17 application, including drift, or a related incident.

18 a. ~~This~~ The report ~~shall have been~~ must be filed within
19 sixty days after the alleged date that damages occurred. If a
20 growing crop is alleged to have been damaged, the report must
21 be filed prior to the time that twenty-five percent of the crop
22 has been harvested. ~~Such statement~~ The report shall contain,
23 but shall not be limited to the name of the person allegedly
24 responsible for the application of ~~said~~ the pesticide, the name
25 of the owner or lessee of the land on which the crop is grown
26 and for which damage is alleged to have occurred, and the date
27 on which the alleged damage occurred.

28 b. The secretary department shall prepare a form to be
29 furnished to persons to be used in ~~such~~ cases opened by the
30 filing of a report and such form shall contain such other
31 requirements as the secretary department may deem proper. The
32 department shall allow a person to complete and file a form as
33 part of the department's electronic case management system as
34 provided in this subsection.

35 c. The secretary department shall, upon receipt of such

1 ~~statement~~ a report, notify the licensee and the owner or
2 lessee of the land or other person who may be charged with the
3 responsibility of the damages claimed, and furnish copies of
4 such ~~statements~~ reports as may be requested. The ~~secretary~~
5 department shall inspect damages whenever possible and when
6 the ~~secretary~~ department determines that ~~the complaint~~ a
7 claim alleged in a report has sufficient merit the ~~secretary~~
8 department shall make such information available to the person
9 ~~claiming damage~~ making the report and to the person who is
10 alleged to have caused the damage.

11 d. The department shall establish and administer an
12 electronic case management system accessible via the
13 department's internet site. The electronic case management
14 system shall allow a person to view, download, or print
15 documents contained in a case file, including a report alleging
16 damages caused by drift and information related to that report,
17 including any information submitted by a licensee or the owner
18 or lessee of land where the pesticide was to be applied. The
19 case file is not required to include information that directly
20 relates to an ongoing investigation or pending administrative
21 enforcement action. However, the case file shall include any
22 information regarding the date, time, specific location, and
23 immediate facts and circumstances surrounding the alleged
24 drift. The electronic case management system shall allow a
25 person to determine the administrative status of a report, the
26 department's final determination regarding the report, and
27 any decision by the department to take administrative action
28 against a licensee who is responsible for causing the drift as
29 claimed in the report.

30 3. The filing of such a report or failure to give notice
31 shall not preclude recovery in an action for damages and shall
32 not affect the limitations of actions set forth in [chapter 614](#).
33 Nothing herein shall prohibit an action for damages for bodily
34 injury or death to any person.

35 a. The filing of such report or the failure to file such a

1 report shall not be a violation of this chapter. However, if
 2 the person failing to file such report is the only one injured
 3 from such use or application of a pesticide by others, the
 4 ~~secretary department~~ may, when in the public interest, refuse
 5 to hold a hearing for the denial, suspension, or revocation of
 6 a license or permit issued under this chapter until such report
 7 is filed.

8 **b.** Where damage is alleged to have occurred, the ~~claimant~~
 9 person filing the report shall permit the ~~secretary department~~,
 10 the licensee, and the licensee's representatives, such as
 11 surety or insurer, to observe within reasonable hours the lands
 12 or nontarget organism alleged to have been damaged in order
 13 that such damage may be examined. ~~Failure~~ The failure of the
 14 ~~claimant person~~ to permit such observation and examination of
 15 the ~~damaged lands~~ damage shall automatically bar the claim
 16 against the licensee.

17 4. The ~~secretary department~~ shall require, by rule, that
 18 ~~veterinarians~~ a veterinarian licensed and practicing ~~veterinary~~
 19 ~~medicine in the~~ this state promptly report to the department a
 20 case of domestic livestock poisoning or suspected poisoning by
 21 agricultural chemicals.

22 Sec. 3. EFFECTIVE DATE. This Act, being deemed of immediate
 23 importance, takes effect upon enactment.

24 Sec. 4. APPLICABILITY. This Act does not require the
 25 department of agriculture and land stewardship to provide
 26 access to the electronic case management system in order to
 27 view, download, or print documents that were filed with the
 28 department prior to January 1, 2021.

29 EXPLANATION

30 The inclusion of this explanation does not constitute agreement with
 31 the explanation's substance by the members of the general assembly.

32 BILL'S PROVISIONS. This bill amends the "Pesticide Act of
 33 Iowa" (Code chapter 206), which is administered and enforced by
 34 the department of agriculture and land stewardship (DALs) under
 35 the supervision of the secretary of agriculture. The bill

1 requires DALS to establish and administer an electronic case
2 management system (system) accessible by a member of the public
3 using DALS' internet site. The system must allow a person to
4 view, download, or print documents contained in a case file,
5 including documents relating to a report in which there is a
6 claim of damages resulting from the drift of a pesticide. It
7 must also allow a person to determine the administrative status
8 of a report, the department's final determination regarding
9 the report, and any decision by the department to take
10 administrative action against a licensee who is responsible for
11 causing the drift as claimed in the report.

12 BACKGROUND. A pesticide is any substance used to prevent,
13 destroy, repel, or mitigate damages caused by insects, rodents,
14 nematodes, fungi, weeds, or other forms of plant or animal life
15 or viruses (Code section 206.2). A person who claims damages
16 incurred as a result of the application of pesticides may file
17 a report with DALS, which may conduct an investigation (Code
18 section 206.14). DALS may suspend or revoke an applicator's
19 license for negligence (Code section 206.11) and may establish,
20 assess, and collect civil penalties for violations by
21 commercial applicators for an amount not to exceed \$500 for
22 each offense (Code section 206.19).

23 EFFECTIVE DATE. The bill takes effect upon enactment.

24 APPLICABILITY. The bill provides that DALS is not required
25 to provide access to the system to view, download, or print
26 documents that were filed with the department prior to January
27 1, 2021.